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SUMMARY RECORD OF THE 307th MEETING

Held at the Palais des Nations, Geneva,
on Monday, 3 June 1996, at 3 p.m.

Chairperson: Mrs. EUFEMIO

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The meeting was called to order at 3.10 p.m.

CONSIDERATION OF REPORTS OF STATES PARTIES (agenda item 4) (continued)

Initial report of Guatemala (CRC/C/3/Add.33) (continued)

1. Mrs. SANTOS PAIS said that much of Guatemala's legislation was not in conformity with the provisions of the Convention and that the adoption of a code on children and adolescents should be considered. The marriageable age was an obvious example of incompatibility with the Convention in so far as the difference in ages for boys and girls amounted to discrimination. Were there any plans to amend legislation to rectify that situation?

2. The absence of an upper age-limit for completion of compulsory primary education was a source of concern in that it made it difficult to monitor the extent to which children in Guatemala were enjoying the right to education; it also violated the International Labour Organization's Minimum Age Convention, No. 138 (1973), which stated that the age at which a child could work should not be lower than the age at which compulsory education ended. It was equally worrying to note that in 1989, there were 509,000 minors - some 17 per cent of the economically active population - working in rural areas, which clearly testified to the high drop-out rate in Guatemala's schools.

3. It would be helpful to have some clarification of the system of immunity from prosecution for minors and to know whether there was a minimum age below which a child could not be deprived of liberty for breaking the law by act or omission. Similarly, were children being deprived of their liberty or stigmatized for "irregular behaviour" as a result of situations in which they were the victim, such as abandonment or poverty? Details should also be provided on whether the death penalty could be applied to children, since the Political Constitution of Guatemala did not specifically state otherwise.

4. According to the report, the minimum age for military recruitment was 18. However, there had been allegations of the forced recruitment of children under that age. What measures were being taken to resolve that situation, in view of the efforts to demilitarize Guatemalan society?

5. Mrs. KARP asked what steps were taken to prevent the violation of the rights of children who had been placed in reform or educational institutions and whether such institutions were monitored by the courts, for example. In the same vein, at what age could children give testimony in court cases, what was the attitude to child witnesses and what were the procedures for a child to lodge a complaint of sexual abuse, for example, if he or she was too young to go before a court?

6. Mr. ARRANZ SANZ (Guatemala) said that legislation governing the minimum marriageable age for girls and boys was under review, as part of an overhaul of the entire Political Constitution following the signing of the peace agreements. However, perhaps more important than legislative reform was the need to help children to become responsible adults through education. The Government had an excellent programme for girls' education, involving both the public and private sectors.

7. Unfortunately, Guatemala's education legislation set no upper limit at which compulsory education had to be completed. It was therefore true that a child over 14 years of age could work without having finished his or her compulsory education. Efforts were being made to rectify the situation through legislative reforms and social improvements, so that children did not have to work to help support the family.

8. Forced military recruitment had been prohibited since 1995 and cases of such practices were isolated. Congress was in the process of discussing three bills concerning military service, including provisions for conscientious objectors and social service as an alternative to military service.

9. Mr. AVAL (Guatemala), responding to the question on the immunity of minors from prosecution, said that a new awareness of the rights of the child was being promoted within the justice system. Regulations governed the age at which a child could testify in court in exceptional cases. However, in practice, it was rare for a child to appear in court.

10. Mr. ARRANZ SANZ (Guatemala) said that regulations needed to be amended and a code introduced to clarify the situation of criminal responsibility and to ensure that situations arising from poverty were decriminalized as far as possible. However, under current legislation, criminal responsibility began at the age of 18. Thus, the death penalty could not be applied to children under that age.

11. Mrs. KARP asked for clarification of the provision that a child could testify only in exceptional circumstances and regarding the age at which a child could lodge a complaint on his or her own behalf, without the consent of the parents or guardian. That was particularly important in cases where a child wished to take legal action to seek redress for sexual abuse. Did the authorities plan to amend legislation concerning the age at which a child could be called as a witness in court, in order to comply, inter alia, with the right of participation of the child enshrined in the Convention?

12. Mr. ARRANZ SANZ (Guatemala) said that machinery through which children could lodge complaints would be provided for in the legislative reforms. One initiative that had already been taken was the telephone service provided by the Human Rights Procurator whereby complaints received were passed on to the Children's Ombudsman, who investigated the allegations and sent the case to court where necessary.

13. Mrs. SANTOS PAIS said that there was general agreement on the need for legislative reform, including of the marriageable age. However, education and training, with the support of international organizations such as the United Nations Children's Fund (UNICEF), would be equally valuable in helping to change cultural attitudes. The same was true for the complicated issue of child labour. The Government needed to create a climate in which parents could afford to send their children to school, possibly by financial support providing for the family.

14. The Political Constitution of Guatemala specifically must stipulate that children were not subject to the death penalty. Efforts should also be made to change the attitudes of judges and lawyers through systematic training programmes.

15. Mr. ARRANZ SANZ (Guatemala) said that he agreed with the comments and recommendations made, which were particularly pertinent to a country in which children were often used by adults to commit crimes, in the knowledge that the child was immune from prosecution. Training and education programmes for people working in the legal profession were clearly needed and would emphasize that international treaties took precedence over internal law.

16. Mrs. SARDENBERG said that, in her opinion, the section of the report dealing with general principles was particularly weak and seemed to show a lack of understanding of the importance of the four key principles that were the backbone of the Convention as embodied in articles 2, 3, 6 and 12.

17. Guatemala had a historic tradition of discrimination against its indigenous peoples, particularly against indigenous women and girls. That amounted, inter alia, to violations of the right to life and development and disregard for the right of participation of women and girls and for the best interests of the child. Would the proposed legislative amendments include provisions to promote and assist marginalized groups and would there be policies and programmes to eliminate discrimination against indigenous children, in particular?

18. One positive aspect of the report was the fact that Guatemala had withdrawn its reservation to the Convention on the Elimination of All Forms of Discrimination against Women.

19. Mrs. KARP asked the delegation to provide examples of the way in which the courts applied the general principles of the rights of the child. She also observed, in connection with the rise in criminality among juveniles, that one means of protecting children from being used by adults to commit crimes was to adopt the system prevailing in some other countries, whereby such an adult was deemed criminally responsible for the offence.

20. Mrs. SANTOS PAIS said that Guatemala had not dealt fully enough with the general principles, in either the report or the replies. Yet those principles were the nub of the Convention, with their insistence that children should always be the priority and that they must be involved in dialogue and negotiation at all times, whether in the courts or elsewhere. It was to be hoped the proposed legislation outlawing discrimination of all kinds, would be precise enough. She asked how it would reflect the need for the equal treatment of girls and how it would ensure that action was taken to implement the law. She also asked to what extent children from ethnic minorities and children in irregular situations were discriminated against in practice and whether the use of a minority language constituted an obstacle for them. If such discrimination existed, what system of monitoring existed to deal with it? Even more important, the cause of such discrimination had to be tackled and solutions found to the inequalities between urban and rural areas, boys and girls, rich and poor. She asked, too, how the best interests of children were catered for. It was understandable that Guatemala gave priority to

peace, but peace was built through investment in society and if children did not benefit from such investment there was a possibility of new conflicts. Lastly, she commented on the paradox that article 12, relating to freedom of expression, was exemplified in the report by the child's right to remain silent when arrested by the police. There were so many circumstances in which the child's voice needed to be heard

21. Mr. MOMBESHORA asked whether there was a person or an agency which could be appealed to in cases outside the mandate of the Children's Ombudsman, such as the alleged killing of street children by the security forces.

22. Mr. KOLOSOV said that the Minors Department created by the National Police had stipulated that the best interests of the child should prevail in police and court procedures. It was not, however, easy to determine what those best interests were, however good the intentions of the police. He therefore asked whether there were any objective criteria or specific training programmes on how decisions should be reached. Was the child's point of view heard? He asked the delegation to provide specific examples of the kind of dialogue conducted with children brought to a police station.

23. Mrs. BADRAN drew the delegation's attention to the fact that several United Nations agencies ran programmes that could help countries in tackling sex discrimination. She urged the Government to take advantage of such gender-sensitizing programmes. Secondly, as prejudices were learnt early in life, Guatemala should ensure that textbooks did not perpetuate prejudices against girls, minorities and others.

24. Mrs. KARP asked, further to Mr. Kolosov's remarks, why children needed to be taken to police stations at all, if criminal responsibility did not begin until the age of 18. It would be more appropriate for them to go through educational channels.

25. Mr. ARRANZ SANZ (Guatemala) conceded that discrimination remained a problem, but he urged the Committee to look beyond the bare facts and acknowledge the progress that had been made. Discrimination was not permitted under the Constitution and legislation in that connection was improving, although it had not yet been brought into line with international instruments, including the Convention. The Government had, however, for the first time recognized the existence of de facto discrimination. The proposed legislation would make discrimination of any kind unlawful and contained specific commitments in the area of education and services to transform society. The priority was peace, it was true, but peace had two aspects. The first step was to sign an agreement to end the armed conflict, but the second was to rebuild the whole social structure, to give peace a human face.

26. Although illiteracy was concentrated in the rural areas, his country's performance in encouraging the use of Mayan languages had improved greatly. As for children's involvement in crime, that was the fault of a violent culture, and a distinction had to be made between children who were forced into crime and those who, however misguidedly, were voluntary participants. He hoped that the culture that encouraged the latter could be reversed through education. With regard to the best interests of the child, he said that the

police received no specific training on dealing with children, although they could call on the services of psychologists. The police were trained to investigate crimes against children.

27. Mrs. SANTOS PAIS welcomed the proposed legislation prohibiting discrimination; she hoped that it would cover all aspects of the Convention. Some action, however need not wait for the introduction of the bill; existing discrimination against vulnerable groups could be tackled immediately. For example, of 2.2 million Mayan school-age children only 1.4 million attended primary school and of those only 170,000 were taught in Mayan. Only 30 per cent of indigenous girls attended school and 78 per cent of indigenous women were illiterate; that represented a much higher proportion than the national average and the situation with regard to secondary education was even worse. The most disadvantaged groups should receive priority in the provision of free and universal education. She wished to know what active measures the Government was taking to implement its ambitious plans.

28. Mr. KOLOSOV drew attention to article 2 of the Convention, providing for the protection of a child against discrimination based on the opinions of its parents. In view of Guatemala's recent history and given that in small places, where everybody knew everybody else, people's political opinions were widely known, the article ought to be enshrined in law, whether in the proposed legislation on discrimination or in separate law.

29. Mr. ARRANZ SANZ (Guatemala) said that 35 years of armed conflict had created enormous problems and the Government was doing all that it could. There was an urgent need for funds in order to implement many specific development projects which currently existed only on paper, and a programme of fiscal reform had been initiated.

30. With regard to the situation of indigenous peoples he recalled Guatemala's ratification of ILO Convention No. 169 and the commitment entered into by the Government. Joint bodies had also been set up to look into the situation.

31. Legislation existed to deal with the problem of discrimination based on political opinion, but it represented one of the most difficult aspects of reconstruction. It did not appear to constitute a problem as far as children were concerned, however.

32. Mr. KOLOSOV said that, unless a child was registered, he or she did not become a subject of law. According to the information given to the Committee, the Government of Ecuador made use of students who travelled the country helping to register newborn children and explaining to parents the importance of such action. He thought that a similar procedure might also be followed in Guatemala.

33. Mrs. SANTOS PAIS said that she welcomed the frankness of the delegation in recognizing the problems and difficulties facing their country. It was important to plan for the future, but it was also important to consider what Guatemala had achieved since ratifying the Convention. In that regard, she referred to the scope and importance of the agreements concerning the rights

of indigenous peoples and economic and social questions and of the Plan of Action for Social Development, Human Development, Childhood and Youth.

34. She stressed the importance providing for birth registration, particularly since so many children lived in remote rural and indigenous areas. She would therefore like to know what measures had been adopted to ensure universal birth registration in Guatemala.

35. With regard to paragraph 22 of the list of issues (CRC/C.12/WP.1), she would like to know whether children whose rights had been violated were entitled to take action so that the violation could be investigated.

36. She asked who would carry out an investigation if a child had been mistreated, tortured or murdered, how long such investigations took to complete, what was the role of the courts and what was done to publicize the outcome of proceedings, in order to strengthen confidence in the justice system. According to her information, there had been only seven convictions in such cases. The Office of the Human Rights Procurator had recognized that in the first three months of 1996, 84 children had been killed. She would like to know what was being done to put an end to impunity for such acts in Guatemala. She also asked what was being done to eliminate all paramilitary groups and provide training to the police so that they would be seen as a support rather than as a threat. She would also like to know what measures were being taken to reform the penal code to afford protection to street children and children from poor backgrounds.

37. Mr. AVAL (Guatemala) said, with regard to birth registration, efforts were complicated by the fact that much of the population lived in remote and scattered communities as well as by cultural factors. However it was hoped to improve the registration system so as to cover all areas of the country.

38. With regard to the question of criminal proceedings, he said that in many of the cases involved it had not been possible to obtain convictions because of lack of evidence.

39. Mrs. SANCHEZ PAIZ said that in a society which was still highly militarized, it was a matter for great concern that children appeared to be regarded as having no value. It was essential that the demilitarization of society should lead to an attitude whereby all groups were respected. She expressed regret that it had not been possible to investigate crimes committed against children in a systematic manner. While democratization was essential, the rights of the child were a priority. The State authorities had to be able to transmit the message that human rights were a fundamental element of society. She recommended that absolute priority should be given to the rights of children as the most vulnerable sector of society. The message that impunity was at an end had to be sent very clearly in Guatemala. The agreements that had been signed and the commitments of the Government should mean something for children.

40. Mrs. SARDENBERG said she would like to know whether anything had been done in Guatemala to reintegrate street children into society.

41. Mr. ARRANZ SANZ (Guatemala) said that street children, of whom there were about 1,500 in Guatemala, did not represent the main problem with regard to children. His Government considered that hospitals without services, lack of education, rural areas without drinking water and displacement of population, which were consequences of 35 years of armed conflict, presented far greater problems.

42. A programme had been introduced to restructure the security forces and the armed forces, which had led to changes in the Ministry of the Interior, and there were various proposals for modifying the Code of Criminal Procedure. With those measures, the Government hoped to break down the wall of impunity soon, but the success of its efforts depended on achieving a consensus. However, some progress had been made.

43. Mrs. SANTOS PAIS said that the Committee shared the hopes expressed by the delegation. Considerable hope was placed on the new Government and investigations could always be resumed if new evidence was produced. Ideally, institutions should be able to institute proceedings without having any petition from the victim, a process which might alleviate the atmosphere of fear and impunity.

44. Mr. ARRANZ SANZ (Guatemala) said that the Attorney General, the Procurator, the Ombudsman and the Ministry of Justice were investigating cases of abuse.

45. Mrs. SANTOS PAIS commented that, given the years of violent conflict in Guatemala, the role of the family assumed even greater importance, and asked what kind of support the Government was providing for families.

46. She asked what action the Government was taking to combat child trafficking and encourage legal adoption. It was important for the Government both to pass its proposed adoption law and to ratify the Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption.

47. The ill-treatment of children appeared to be endemic in Guatemala, where the notion seemed to persist that they were not autonomous individuals, but the property of the family; that attitude needed to be changed. She asked what measures the Government intended to take to gather the necessary data on the subject, and to ensure that parents, guardians and teachers stopped seeing ill-treatment as a suitable form of punishment. She also wished to know what specific policies were being developed to rehabilitate children who had suffered abuse in their families, and to ensure their physical and mental recovery.

48. Mrs. KARP said it was a good sign that the Government acknowledged the existence of child abuse and sexual abuse in Guatemala and that it had established a national body to look into it; she would welcome details on the scope of that body's action. The rehabilitation of children required a comprehensive approach which involved professionals at every step of the way, from the moment a complaint was lodged. Coordination was also vital, for example, between the police and social workers, to ensure that treatment was also available for the perpetrator. She asked what the prospects were for new legislation on rehabilitation and for new coordination mechanisms.

49. Mrs. SARDENBERG said that, while much was made of what the Government was going to do in the future to stop the ill-treatment of children, there were few signs that it was already doing anything. It was important to produce some examples of projects already under way and to set a date for the adoption of the draft code on childhood and adolescence or the law against discrimination, for example. It was also important to evaluate the results of action already taken, such as the appointment of the Children's Ombudsman.

50. She said the use of special telephone lines for children who had been the victims of abuse was a very useful first step, and asked if the results of Guatemala's 155 line had been positive, or whether the service needed to be improved. The time was right for change, the political will was there, and the problems had been acknowledged, but there was so much to do that the Government must make an effort to keep its plans realistic.

51. Mr. MOMBESHORA asked whether there was a counselling service available to prepare young people for marriage and whether the Government had run into any problems with its impressive maintenance recovery programme.

52. Regarding health issues, he asked what percentage of the Government's most recent budget had been devoted to health. He welcomed the large increase in the proportion of the health budget being allocated to preventive health programmes. He wished to know if the Government had a national nutritional policy, and, if so, whether it took into account the need to grow nutritious crops as well as cash crops, and whether the problem was exacerbated by a land shortage.

53. He questioned the effectiveness of the Government's programme to teach people about the treatment for diarrhoea, especially in parts of the country where there were few hospitals.

54. He asked whether the fact that 78 per cent of confinements took place in the home was a result of Government policy or of a shortage of facilities, and whether the traditional midwives mentioned in paragraph 186 of the report received any medical training. The high rate of home confinements and the use of apparently untrained personnel seemed inconsistent with the Government's claim that neonatal tetanus had been virtually eliminated. He asked whether it was possible to disaggregate the figures on infant mortality, in order to distinguish between urban, rural and indigenous rates.

55. Noting that the figures on HIV/AIDS were low by international standards, he asked precisely what drugs and equipment were available, given the constraints on resources, and whether diagnostic equipment was available throughout the country so that all deaths from AIDS were correctly recorded as such.

56. He asked if legal instruments were in place to ensure the provision of services to the disabled and mentally handicapped. He understood that there was quite a lot of discrimination against disabled people in Guatemala, especially in the workplace, and asked if there were any programmes to train them in appropriate trades and reintegrate them into the community.

57. Mr. AVAL (Guatemala) said that the Government did not give a higher priority to the ratification of the Hague Convention than to its own domestic legislation on adoption. However, while the Government continued to seek opinions on the ratification of the Convention within its own departments, the legislation on adoption had been held up by a variety of political factors. The Government was nevertheless determined to secure the passage of the bill through Parliament.

58. The National Committee against the Ill-treatment of Children had been set up by the Children's Ombudsman, working within the Office of the Human Rights Procurator, and included representatives of non-governmental organizations and groups which had been formed spontaneously in hospitals throughout the country to oppose the ill-treatment of children. The Committee's successes included re-establishing line 155, with the aim of making it available 24 hours a day.

59. He agreed that policies for the rehabilitation of victims of abuse were needed, and asked for technical assistance in setting up a centre to deal with the growing number of complaints of child abuse.

60. Mr. ARRANZ SANZ (Guatemala) insisted that the Government was not merely talking about projects for the future; most of the items being discussed, such as the draft code on childhood and adolescence, had already been considered by the previous Government, and were being vigorously pursued by the new Government.

61. Progress was being made in curbing illegal adoption and child trafficking. The Government was taking all possible measures to improve registration mechanisms; for example, it was looking into the possibility of taking footprints of babies at birth. He agreed that a new law on adoption was badly needed. At the moment, various judges could authorize adoptions and the system was wide open to abuse.

62. There had been some progress in identifying and publicizing the ill-treatment of children, although no firm data were yet available on the extent of the problem. For example, an initiative by the Children's Ombudsman had led to the creation of national departmental committees on the protection of children's rights. The departmental committees included representatives of local authorities, social workers and human rights activists working together to increase public awareness of the rights of the child and make it easier to report abuse. Their campaigns were producing results, as shown by the recent public denunciation by the head teacher of a secondary school of cases of child abuse. With the help of UNICEF, an excellent education programme had been set up, so that child abuse was now openly discussed. The programmes mentioned, as well as others, had been initiated under the auspices of the Office of the Human Rights Procurator and were intended to cover all children in Guatemala, without exception.

63. On the question of evaluating the Government's programmes, he admitted that the data available from the Children's Ombudsman were insufficient. The reliability and effectiveness of line 155 should be improved once it had been fully computerized. Marriage counselling was provided by schools and the predominantly Christian Churches, although there was no systematic provision for it.

64. The mechanisms for convicting those who abused children were working, but rehabilitation was not yet taking place. Guatemala was asking for international assistance to deal with rehabilitation, which was an extremely important issue, as broken homes were at the root of much mental, physical and sexual abuse.

65. Another issue to be addressed was the need for healthy and rational family planning. A programme was in place to educate girls, and it was achieving excellent results in lowering fertility rates.

66. He confirmed that the new Government had indeed switched a large part of its health budget to preventive health care, and intended to focus on preventive action in the future.

67. Mrs. SANTOS PAIS said that there had been many cases of abduction leading to illegal adoption in Guatemala in 1994, and that it was important to understand how control mechanisms and professional training could be used to combat those practices.

68. According to some reports, 3 out of 10 children in Guatemala had been victims of abuse. She asked if the National Committee had records of abuse, and what it was doing to publicize its message against abuse.

69. While international support would help Guatemala to approach the problem of rehabilitation, it was also important for the Government to play its part in changing attitudes in the country, so that the rehabilitation of children could take place in an atmosphere of respect for the child and the child's dignity.

The meeting rose at 6.05 p.m.